it ſhall have been paid to the creditor. The ſheriff may certainly make ſuch payment out of court, if no circumſtance occurs which legally obſtructs or oppoſes it, ſuch as an injunction from the court of chancery, in which caſe, by the law of Virginia, the money muſt be returned; or an execution againſt the goods and chattels of the perſon to whom the money in his hands ſhall be payable. In the latter caſe it ſeems to the court ſtill to be the duty of the ſheriff to obey the order of the writ and to bring the money into court, there to be diſpoſed of as the court may direct. This was done in the caſe of *Armiſtead v. Philpot*, and in that caſe the court directed the money to be paid in ſatisfaction of the ſecond execution. This ought to be done whenever the legal and equitable right to the money is in the perſon whoſe goods and chattels are liable to ſuch execution.

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In the caſe of Turner and Fendall, the ſheriff not having brought the money into court, but having levied an execution on it while in his hands, has not ſufficiently juſtified the non-payment of it to the creditor; and therefore the court committed no error in rendering judgment againſt him on the motion of that creditor. If the payment of the damages ſhould be againſt equity, that was not a ſubject for the conſideration of the court of law which rendered the judgment.

Judgment affirmed.

WILLIAM MARBURY
v.
JAMES MADISON, SECRETARY OF STATE OF THE UNITED STATES.

FEBRUARY, 1803.

AT the laſt term, viz. December term, 1801, William Marbury, Dennis Ramſay, Robert Townſend Hooe, and William Harper, by their counſel, Charles Lee, eſq. late attorney general of the United States,

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The ſupreme court of the U States has not power to iſſue a mandamus to a ſecretary of ſtate of the U States, it being an exerciſe of *original* juriſdiction not warranted by the conſtitution. Congreſs have not power to give original juriſdiction to the ſupreme court in other caſes than thoſe deſcribed in the conſtitution. An act of congreſs repugnant to the conſtitution can not become a law. The courts of the U. States are bound to take notice of the conſtitution. A commiſſion is not neceſſary to the appointment of an officer by the executive—Semb. A commiſſion is only *evidence* of an appointment Delivery is not neceſſary to the validity of letters patent The Preſident cannot authorize a ſecretary of ſtate to omit the perform-

ſeverally moved the court for a rule to James Madiſon, ſecretary of ſtate of the United States, to ſhew cauſe why a mandamus ſhould not iſſue commanding him to cauſe to be delivered to them reſpectively their ſeveral commiſſions as juſtices of the peace in the diſtrict of Columbia. This motion was ſupported by affidavits of the following facts; that notice of this motion had been given to Mr. Madiſon; that Mr. Adams, the late preſident of the United States, nominated the applicants to the ſenate for their advice and conſent to be appointed juſtices of the peace of the diſtrict of Columbia; that the ſenate adviſed and conſented to the appointments; that commiſſions in due form were ſigned by the ſaid preſident appointing them juſtices, &c. and that the ſeal of the United States was in due form affixed to the ſaid commiſſions by the ſecretary of ſtate; that the applicants have requeſted Mr. Madiſon to deliver them their ſaid commiſſions, who has not complied with that requeſt; and that their ſaid commiſſions are withheld from them; that the applicants have made application to Mr. Madiſon as ſecretary of ſtate of the United States at his office, for information whether the commiſſions were ſigned and ſealed as aforeſaid; that explicit and ſatisfactory information has not been given in anſwer to that enquiry, either by the ſecretary of ſtate or any officer in the department of ſtate; that application has been made to the ſecretary of the Senate for a certificate of the nomination of the applicants, and of the advice and conſent of the ſenate, who has declined giving ſuch a certificate; whereupon a rule was laid to ſhew cauſe on the 4th day of this term. This rule having been duly ſerved,

Mr. Lee, in ſupport of the rule, obſerved that it was important to know on what ground a juſtice of peace in the diſtrict of Columbia holds his office, and what proceedings are neceſſary to conſtitute an appointment to an office not held at the will of the preſident. However notorious the facts are, upon the ſuggeſtion of which this rule has been laid, yet the applicants have been much embarraſſed in obtaining evidence of them. Reaſonable information has been denied at the office of the department of ſtate. Although a reſpectful memorial has been made to the ſenate praying them to ſuffer their ſecretary to give extracts from their executive journals re-

ſpecting the nomination of the applicants to the ſenate, and of their advice and conſent to the appointments, yet their requeſt has been denied, and their petition rejected. They have therefore been compelled to ſummon witneſſes to attend in court, whoſe voluntary affidavits they could not obtain. Mr. Lee here read the affidavit of Dennis Ramſay, and the printed journals of the ſenate of 31 January, 1803, reſpecting the refuſal of the ſenate to ſuffer their ſecretary to give the information requeſted. He then called Jacob Wagner and Daniel Brent, who had been ſummoned to attend the court, and who had, as it is underſtood, declined giving a voluntary affidavit. They objected to being ſworn, alleging that they were clerks in the department of ſtate and not bound to diſcloſe any facts relating to the buſineſs or tranſactions in the office.

ance of thoſe duties which are enjoined by law.

A juſtice of peace in the diſtrict of Columbia is not removeable at the will of the Preſident.

When a commiſſion for an officer not holding his office at the will of the Preſident, is by him ſigned and tranſmitted to the ſecretary of ſtate to be ſealed and recorded, it is irrevocable; the appointment is complete.

A mandamus is the proper remedy to compel a ſecretary of ſtate to deliver a commiſſion to which the party is intitled.

Mr. Lee obſerved, that to ſhew the propriety of examining theſe witneſſes, he would make a few remarks on the nature of the office of ſecretary of ſtate. His duties are of two kinds, and he exerciſes his functions in two diſtinct capacities; as a public miniſterial officer of the United States, and as agent of the Preſident. In the firſt his duty is to the United States or its citizens; in the other his duty is to the Preſident; in the one he is an independent, and an accountable officer; in the other he is dependent upon the Preſident, is his agent, and accountable to him alone. In the former capacity he is compellable by mandamus to do his duty; in the latter he is not. This diſtinction is clearly pointed out by the two acts of congreſs upon this ſubject. The firſt was paſſed 27th July, 1789, vol. 1. p. 359, entitled "an act for eſtabliſhing an executive department, to be denominated the department of foreign affairs." The firſt ſection aſcertains the duties of the ſecretary ſo far as he is conſidered as a mere executive agent. It is in theſe words, "Be it "enacted, &c. that there ſhall be an executive depart- "ment, to be denominated the department of foreign af- "fairs, and that there ſhall be a principal officer therein, "to be called the ſecretary of the department of foreign "affairs, who ſhall perform and execute ſuch duties as "ſhall from time to time be enjoined on, or intruſted to "him by the Preſident of the United States, agreeable "to the conſtitution, relative to correſpondencies, com-

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"missions or instructions to or with public ministers or "consuls from the United States; or to negociations with "public ministers from foreign states or princes, or to "memorials or other applications from foreign public ministers, or other foreigners, or to such other matters "respecting foreign affairs as the President of the United "States shall assign to the said department; and furthermore, that the said principal officer shall conduct the "business of the said department in such manner as the "President of the United States shall from time to time "order or instruct."

The second section provides for the appointment of a chief clerk; the third section prescribes the oath to be taken which is simply, "well and faithfully to execute the "trust committed to him;" and the fourth and last section gives him the custody of the books and papers of the department of foreign affairs under the old congress. Respecting the powers given and the duties imposed by this act, no mandamus will lie. The secretary is responsible only to the President. The other act of congress respecting this department was passed at the same session on the 15th September 1789, vol. 1, p. 41, c. 14, and is entitled "An act to provide for the safe keeping of the "acts, records, and seal of the United States, and for other purposes." The first section changes the name of the department and of the secretary, calling the one the department and the other the secretary of state. The second section assigns new duties to the secretary, in the performance of which it is evident, from their nature, he cannot be lawfully controlled by the president, and for the non-performance of which he is not more responsible to the president than to any other citizen of the United States. It provides that he shall receive from the president all bills, orders, resolutions and votes of the senate and house of representatives, which shall have been approved and signed by him; and shall cause them to be published, and printed copies to be delivered to the senators and representatives and to the executives of the several states; and makes it his duty carefully to preserve the originals; and to cause them to be recorded in books to be provided for that purpose. The third section provides a seal of the United States. The fourth makes it his duty to keep the said seal, and to make out and record, and to affix the seal of the United States to all civil commissions, after they

ſhall have been ſigned by the Preſident. The fifth ſection provides for a ſeal of office, and that all copies of records and papers in his office, authenticated under that ſeal, ſhall be as good evidence as the originals. The ſixth ſection eſtabliſhes fees for copies, &c. The ſeventh and laſt ſection gives him the cuſtody of the papers of the office of the ſecretary of the old congreſs. Moſt of the duties aſſigned by this act are of a public nature, and the ſecretary is bound to perform them, without the control of any perſon. The Preſident has no right to prevent him from receiving the bills, orders, reſolutions and votes of the legiſlature, or from publiſhing and diſtributing them, or from preſerving or recording them. While the ſecretary remains in office the Preſident cannot take from his cuſtody the ſeal of the United States, nor prevent him from recording, and affixing the ſeal to civil commiſſions of ſuch officers as hold not their offices at the will of the Preſident, after he has ſigned them and delivered them to the ſecretary for that purpoſe. By other laws he is to make out and record in his office patents for uſeful diſcoveries, and patents of lands granted under the authority of the United States. In the performance of all theſe duties he is a public miniſterial officer of the United States. And the duties being enjoined upon him by law, he is, in executing them, uncontrolable by the Preſident; and if he neglects or refuſes to perform them, he may be compelled by mandamus, in the ſame manner as other perſons holding offices under the authority of the United States. The Preſident is no party to this caſe. The ſecretary is called upon to perform a duty over which the Preſident has no control, and in regard to which he has no diſpenſing power, and for the neglect of which he is in no manner reſponſible. The ſecretary alone is the perſon to whom they are entruſted, and he alone is anſwerable for their due performance. The ſecretary of ſtate, therefore, being in the ſame ſituation, as to theſe duties, as every other miniſterial officer of the United States, and equally liable to be compelled to perform them, is alſo bound by the ſame rules of evidence. Theſe duties are not of a confidential nature, but are of a public kind, and his clerks can have no excluſive privileges. There are undoubtedly facts, which may come to their knowledge by means of their connexion with the ſecretary of ſtate, reſpecting which

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they cannot be bound to anſwer. Such are the facts concerning foreign correſpondencies, and confidential communications betweeh the head of the department and the Preſident. This, however, can be no objection to their being ſworn, but may be a ground of objection to any particular queſtion. Suppoſe I claim title to land under a patent from the United States. I demand a copy of it from the ſecretary of ſtate. He refuſes. Surely he may be compelled by mandamus to give it. But in order to obtain a mandamus, I muſt ſhew that the patent is recorded in his office. My caſe would be hard indeed if I could not call upon the clerks in the office to give evidence of that fact. Again, ſuppoſe a private act of congreſs had paſſed for my benefit. It becomes neceſſary for me to have the uſe of that act in a court of law. I apply for a copy. I am refuſed. Shall I not be permitted, on a motion for a mandamus, to call upon the clerks in the office to prove that ſuch an act is among the rolls of the office, or that it is duly recorded? Surely it cannot be contended that although the laws are to be recorded, yet no acceſs is to be had to the records, and no benefit to reſult therefrom.

The court ordered the witneſſes to be ſworn and their anſwers taken in writing, but informed them that when the queſtions were aſked they might ſtate their objections to anſwering each particular queſtion, if they had any.

Mr. Wagner being examined upon interrogatories, teſtified, that at this diſtance of time he could not recollect whether he had ſeen any commiſſion in the office, conſtituting the applicants, or either of them juſtices of the peace. That Mr Marbury and Mr. Ramſay called on the ſecretary of ſtate reſpecting their commiſſions. That the ſecretary referred them to him; he took them into another room and mentioned to them, that two of the commiſſions had been ſigned, but the other had not. That he did not know that fact of his own knowledge, but by the information of others. Mr. Wagner declined anſwering the queſtion "who gave him that information;" and the court decided that he was not bound to anſwer it, becauſe it was not pertinent to this cauſe. He further teſtified that ſome of the commiſſions of the juſtices, but he believed not all, were recorded. He did not know whether the commiſſions of the applicants were

recorded, as he had not had recourſe to the book for more than twelve months paſt.

Mr. Daniel Brent teſtified, that he did not remember certainly the names of any of the perſons in the commiſſions of juſtices of the peace ſigned by Mr. Adams; but believed, and was almoſt certain, that Mr. Marbury's and col. Hooe's commiſſions were made out, and that Mr. Ramſay's was not; that he made out the liſt of names by which the clerk who filled up the commiſſions was guided; he believed that the name of Mr. Ramſay was pretermitted by miſtake, but to the beſt of his knowledge it contained the names of the other two; he believed none of the commiſſions for juſtices of the peace ſigned by Mr. Adams, were recorded. After the commiſſions for juſtices of the peace were made out, he carried them to Mr. Adams for his ſignature. After being ſigned he carried them back to the ſecretary's office, where the ſeal of the United States was affixed to them. That commiſſions are not uſually delivered out of the office before they are recorded; but ſometimes they are, and a note of them only is taken, and they are recorded afterwards. He believed none of thoſe commiſſions of juſtices were ever ſent out, or delivered to the perſons for whom they were intended; he did not know what became of them, nor did he know that they are now in the office of the ſecretary of ſtate.

Mr. Lincoln, attorney general, having been ſummoned, and now called, objected to anſwering. He requeſted that the queſtions might be put in writing, and that he might afterwards have time to determine whether he would anſwer. On the one hand he reſpected the juriſdiction of this court, and on the other he felt himſelf bound to maintain the rights of the executive. He was acting as ſecretary of ſtate at the time when this tranſaction happened. He was of opinion, and his opinion was ſupported by that of others whom he highly reſpected, that he was not bound, and ought not to anſwer, as to any facts which came officially to his knowledge while acting as ſecretary of ſtate.

The queſtions being written were then read and handed to him. He repeated the ideas he had before ſuggeſted, and ſaid his objections were of two kinds.

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1ſt. He did not think himſelf bound to diſcloſe his official tranſactions while acting as ſecretary of ſtate; and

2d. He ought not to be compelled to anſwer any thing which might tend to criminate himſelf.

Mr. Lee, in reply, repeated the ſubſtance of the obſervations he had before made in anſwer to the objections of Mr. Wagner and Mr. Brent. He ſtated that the duties of a ſecretary of ſtate were two-fold. In diſcharging one part of thoſe duties he acted as a public miniſterial officer of the United States, totally independent of the Preſident, and that as to any facts which came officially to his knowledge, while acting in this capacity, he was as much bound to anſwer as a marſhal, a collector, or any other miniſterial officer. But that in the diſcharge of the other part of his duties, he did not act as a public miniſterial officer, but in the capacity of an agent of the Preſident, bound to obey his orders, and accountable to him for his conduct. And that as to any facts which came officially to his knowledge in the diſcharge of this part of his duties, he was not bound to anſwer. He agreed that Mr. Lincoln was not bound to diſcloſe any thing which might tend to criminate himſelf.

Mr. Lincoln thought it was going a great way to ſay that every ſecretary of ſtate ſhould at all times be liable to be called upon to appear as a witneſs in a court of juſtice, and teſtify to facts which came to his knowledge officially. He felt himſelf delicately ſituated between his duty to this court, and the duty he conceived he owed to an executive department; and hoped the court would give him time to conſider of the ſubject.

The court ſaid, that if Mr. Lincoln wiſhed time to conſider what anſwers he ſhould make, they would give him time; but they had no doubt he ought to anſwer. There was nothing confidential required to be diſcloſed. If there had been he was not obliged to anſwer it; and if he thought that any thing was communicated to him in confidence he was not bound to diſcloſe it; nor was he obliged to ſtate any thing which would criminate himſelf; but that the fact whether ſuch commiſſions had been in the office or not, could not be a confidential fact; it

is a fact which all the world have a right to know. If he thought any of the queſtions improper, he might ſtate his objections.

Mr. Lincoln then prayed time till the next day to conſider of his anſwers under this opinion of the court.

The court granted it and poſtponed further conſideration of the cauſe till the next day.

At the opening of the court on the next morning, Mr. Lincoln ſaid he had no objection to anſwering the queſtions propoſed, excepting the laſt which he did not think himſelf obliged to anſwer fully. The queſtion was, what had been done with the commiſſions. He had no heſitation in ſaying that he did not know that they ever came to the poſſeſſion of Mr. Madiſon, nor did he know that they were in the office when Mr. Madiſon took poſſeſſion of it. He prayed the opinion of the court whether he was obliged to diſcloſe what had been done with the commiſſions.

The court were of opinion that he was not bound to ſay what had become of them; if they never came to the poſſeſſion of Mr. Madiſon, it was immaterial to the preſent cauſe, what had been done with them by others.

To the other queſtions he anſwered that he had ſeen commiſſions of juſtices of the peace of the diſtrict of Columbia, ſigned by Mr. Adams, and ſealed with the ſeal of the United States. He did not recollect whether any of them conſtituted Mr. Marbury, col. Hooe, or col. Ramſay, juſtices of the peace; there were when he went into the office ſeveral commiſſions for juſtices of peace of the diſtrict made out; but he was furniſhed with a liſt of names to be put into a general commiſſion, which was done, and was conſidered as ſuperſeding the particular commiſſions; and the individuals whoſe names were contained in this general commiſſion were informed of their being thus appointed. He did not know that any one of the commiſſions was ever ſent to the perſon for whom it was made out, and did not believe that any one had been ſent.

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Mr. Lee then read the affidavit of James Marſhall, who had been alſo ſummoned as a witneſs. It ſtated that on the 4th of March 1801, having been informed by ſome perſon from Alexandria that there was reaſon to apprehend riotous proceedings in that town on that night, he was induced to return immediately home, and to call at the office of the ſecretary of ſtate, for the commiſſions of the juſtices of the peace; that as many as 42, as he believed, commiſſions of juſtices for that county were delivered to him for which he gave a receipt, which he left in the office. That finding he could not conveniently carry the whole, he returned ſeveral of them, and ſtruck a pen through the names of thoſe, in the receipt, which he returned. Among the commiſſions ſo returned, according to the beſt of his knowledge and belief, was one for colonel Hooe, and one for William Harper.

Mr. Lee then obſerved, that having proved the exiſtence of the commiſſions, he ſhould confine ſuch further remarks as he had to make in ſupport of the rule to three queſtions:

1ſt. Whether the ſupreme court can award the writ of mandamus in any caſe.

2d. Whether it will lie to a ſecretary of ſtate in any caſe whatever.

3d. Whether in the preſent caſe the court may award a mandamus to James Madiſon, ſecretary of ſtate.

The argument upon the 1ſt queſtion is derived not only from the principles and practice of that country, from whence we derive many of the principles of our political inſtitutions, but from the conſtitution and laws of the United States.

This is the *ſupreme* court, and by reaſon of its ſupremacy muſt have the ſuperintendance of the inferior tribunals and officers, whether judicial or miniſterial. In this reſpect there is no difference between a judicial and a miniſterial officer. From this principle alone the court of king's bench in England derives the power of iſſuing the writs of mandamus and prohibition. 3. Inſt. 70, 71.

Shall it be ſaid that the court of king's bench has this power in conſequence of its being the ſupreme court of judicature, and ſhall we deny it to this court which the conſtitution makes the *ſupreme* court? It is a beneficial, and a neceſſary power; and it can never be applied where there is another *adequate, ſpecific, legal remedy.*

The ſecond ſection of the third article of the conſtitution gives this court appellate juriſdiction in all caſes in law and equity ariſing under the conſtitution and laws of the United States (except the caſes in which it has original juriſdiction) with ſuch exceptions, and under ſuch regulations as congreſs ſhall make. The term "appellate juriſdiction" is to be taken in its largeſt ſenſe, and implies in its nature the right of ſuperintending the inferior tribunals.

Proceedings in nature of appeals are of various kinds, according to the ſubject matter. 3 Bl. com. 402. It is a ſettled and invariable principle, that every right, when withheld, muſt have a remedy, and every injury its proper redreſs. 3 Bl. com. 109. There are ſome injuries, which can only be redreſſed by a writ of mandamus, and others by a writ of prohibition. There muſt then be a juriſdiction ſome where competent to iſſue that kind of proceſs. Where are we to look for it but in that court which the conſtitution and laws have made ſupreme, and to which they have given appellate juriſdiction? Blakſtone, vol. 3, p. 110. ſays that a writ of mandamus is "a command iſſuing in the king's name "from the court of king's bench, and directed to any "*perſon*, corporation or inferior court, requiring them "to do ſome particular thing therein ſpecified, *which* "*appertains to their office and duty*, and which the court "has previouſly determined, or at leaſt ſuppoſes, to be "conſonant to right and juſtice. It is a writ of a moſt "extenſively remedial nature, and iſſues in all caſes where "the party has a right to have any thing done, *and has* "*no other ſpecific means of compelling its performance.*"

In the Federaliſt, vol. 2, p. 239, it is ſaid, that the word "appellate" is not to be taken in its technical ſenſe, as uſed in reference to appeals in the courſe of the *civil* law, but in its broadeſt ſenſe, in which it denotes nothing more than the power of one tribunal to review the pro-

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ceedings of another, either as to law or fact, or both. The writ of mandamus is in the nature of an appeal as to fact as well as law. It is competent for congress to prescribe the forms of process by which the supreme court shall exercise its appellate jurisdiction, and they may well declare a mandamus to be one. But the power does not depend upon implication alone. It has been recognised by legislative provision as well as in judicial decisions in this court.

Congress, by a law passed at the very first session after the adoption of the constitution, vol. 1. p. 58, sec. 13, have expressly given the supreme court the power of issuing writs of mandamus. The words are, "The supreme "court shall also have appellate jurisdiction from the cir- "cuit courts, and courts of the several states, in the cases "herein after specially provided for; and shall have power "to issue writs of prohibition to the district courts, when "proceeding as courts of admiralty and maritime juris- "diction; and writs of *mandamus*, in cases warranted by "the principles and usages of law, to any courts appoint- "ed, or *persons holding office*, under the authority of the "United States."

Congress is not restrained from conferring original jurisdiction in other cases than those mentioned in the constitution. 2 Dal. Rep. 298.

This court has entertained jurisdiction on a mandamus in one case, and on a prohibition in another. In the case of the United States v. judge Lawrence, 3. Dal. Rep. 42, a mandamus was moved for by the attorney general at the instance of the French minister, to compel judge Lawrence to issue a warrant against captain Barre, commander of the French ship of war Le Perdrix, grounded on an article of the consular convention with France. In this case the power of the court to issue writs of mandamus, was taken for granted in the arguments of counsel on both sides, and seems to have been so considered by the court. The mandamus was refused, because the case in which it was required, was not a proper one to support the motion. In the case of the United States v. judge Peters a writ of prohibition was granted, 3. Dal. Rep. 121, 129. This was the celebrated case of the French

corvette the Caſſius, which afterwards became a ſubject of diplomatic controverſy between the two nations. On the 5th Feb. 1794, a motion was made to the ſupreme court in behalf of one John Chandler, a citizen of Connecticut, for a mandamus to the *ſecretary at war*, commanding him to place Chandler on the invalid penſion liſt. After argument, the court refuſed the mandamus, becauſe the two acts of congreſs reſpecting invalids, did not ſupport the caſe on which the applicant grounded his motion. The caſe of the United States v. Hopkins, at February term, 1794, was a motion for a mandamus to Hopkins, loan officer for the diſtrict of Virginia, to command him to admit a perſon to ſubſcribe to the United States loan. Upon argument the mandamus was refuſed becauſe the applicant had not ſufficiently eſtabliſhed his title. In none of theſe caſes, nor in any other, was the power of this court to iſſue a mandamus ever denied. Hence it appears there has been a legiſlative conſtruction of the conſtitution upon this point, and a judicial practice under it, for the whole time ſince the formation of the government.

2d. The ſecond point is, can a mandamus go to a ſecretary of ſtate in any caſe? It certainly cannot in *all* caſes; nor to the Preſident in *any* caſe. It may not be proper to mention this poſition; but I am compelled to do it. An idea has gone forth, that a mandamus to a ſecretary of ſtate is equivalent to a mandamus to the Preſident of the United States. I declare it to be my opinion, grounded on a comprehenſive view of the ſubject, that the Preſident is not amenable to any court of judicature for the exerciſe of his high functions, but is reſponſible only in the mode pointed out in the conſtitution. The ſecretary of ſtate acts, as before obſerved, in two capacities. As the agent of the Preſident, he is not liable to a mandamus; but as a recorder of the laws of the United States; as keeper of the great ſeal, as recorder of deeds of land, of letters patent, and of commiſſions, &c. he is a miniſterial officer of the people of the United States. As ſuch he has duties aſſigned him by law, in the execution of which he is independent of all control, but that of the laws. It is true he is a high officer, but he is not above law. It is not conſiſtent with the policy of our political inſtitutions, or the manners of the citizens of the United States, that any miniſterial officer having public duties to perform,

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ſhould be above the compulſion of law in the exerciſe of thoſe duties. As a miniſterial officer he is compellable to do his duty, and if he refuſes, is liable to indictment. A proſecution of this kind might be the means of puniſhing the officer, but a ſpecific civil remedy to the injured party can only be obtained by a writ of mandamus. If a mandamus can be awarded by this court in any caſe, it may iſſue to a ſecretary of ſtate; for the act of congreſs expreſsly gives the power to award it, "in caſes warrant-"ed by the principles and uſages of law, *to any perſons* "*holding offices under the authority of the United States.*"

Many caſes may be ſuppoſed, in which a ſecretary of ſtate ought to be compelled to perform his duty ſpecifically. By the 5th and 6th ſections of the act of congreſs, vol. 1. p. 43. copies under ſeal of the office of the department of ſtate are made evidence in courts of law, and fees are given for making them out. The intention of the law muſt have been, that every perſon needing a copy ſhould be entitled to it. Suppoſe the ſecretary refuſes to give a copy, ought he not to be compelled? Suppoſe I am entitled to a patent for lands purchaſed of the United States; it is made out and ſigned by the Preſident who gives a warrant to the ſecretary to affix the great ſeal to the patent; he refuſes to do it; ſhall I not have a mandamus to compel him? Suppoſe the ſeal is affixed, but the ſecretary refuſes to record it; ſhall he not be compelled? Suppoſe it recorded, and he refuſes to deliver it; ſhall I have no remedy?

In this reſpect there is no difference between a patent for lands, and the commiſſion of a judicial officer. The duty of the ſecretary is preciſely the ſame.

Judge Patterſon enquired of Mr. Lee whether he underſtood it to be the duty of the ſecretary to deliver a commiſſion, unleſs ordered ſo to do by the Preſident.

Mr. Lee replied, that after the Preſident has ſigned a commiſſion for an office not held at his will, and it comes to the ſecretary to be ſealed, the Preſident has done with it, and nothing remains, but that the ſecretary perform thoſe miniſterial acts which the law impoſes upon him. It immediately becomes his duty to ſeal, record, and de-

liver it on demand. In such a case the appointment becomes complete by the signing and sealing; and the secretary does wrong if he withholds the commission.

3d. The third point is, whether in the present case a writ of mandamus ought to be awarded to James Madison, secretary of state.

The justices of the peace in the district of Columbia are judicial officers, and hold their office for five years. The office is established by the act of Congress passed the 27th of Feb. 1801, entitled "An act concerning the district of Columbia," ch. 86, sec. 11 and 4; page 271, 273. They are authorized to hold courts and have cognizance of personal demands of the value of 20 dollars. The act of May 3d, 1802, ch. 52, sec. 4, considers them as judicial officers, and provides the mode in which execution shall issue upon their judgments. They hold their offices independent of the will of the President. The appointment of such an officer is complete when the President has nominated him to the senate, and the senate have advised and consented, and the President has signed the commission and delivered it to the secretary to be sealed. The President has then done with it; it becomes irrevocable. An appointment of a judge once completed, is made forever. He holds under the constitution. The requisites to be performed by the secretary are ministerial, ascertained by law, and he has no discretion, but must perform them; there is no dispensing power. In contemplation of law they are as if done.

These justices exercise part of the judicial power of the United States. They ought therefore to be independent. Mr. Lee begged leave again to refer to the Federalist, vol. 2, Nos. 78 and 79, as containing a correct view of this subject. They contained observations and ideas which he wished might be generally read and understood. They contained the principles upon which this branch of our constitution was constructed. It is important to the citizens of this district that the justices should be independent; almost all the authority immediately exercised over them is that of the justices. They wish to know whether the justices of this district are to hold their commissions at the will of a secretary of state.

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This cauſe may ſeem trivial at firſt view, but it is important in principle. It is for this reaſon that this court is now troubled with it. The emoluments or the dignity of the office, are no objects with the applicants. They conceive themſelves to be duly appointed juſtices of the peace, and they believe it to be their duty to maintain the rights of their office, and not to ſuffer them to be violated by the hand of power. The citizens of this diſtrict have their fears excited by every ſtretch of power by a perſon ſo high in office as the ſecretary of ſtate.

It only remains now to conſider whether a mandamus to compel the delivery of a commiſſion by a public miniſterial officer, is one of "the caſes warranted by the principles and uſages of law."

It is the general principle of law that a mandamus lies, if there be no other *adequate, ſpecific, legal* remedy; 3 Burrow, 1067, *King v. Barker, and al.* This ſeems to be the reſult of a view of all the caſes on the ſubject.

The caſe of Rex. v. Borough of Midhurſt, 1. Wils. 283, was a mandamus to compel the preſentment of certain conveyances to purchaſers of burgage tenements, whereby they would be entitled to vote for members of parliament. In the caſe of Rex v. Dr. Hay, 1. W. Bl. Rep. 640, a mandamus iſſued to admit one to adminiſter an eſtate.

A mandamus gives no right, but only puts the party in a way to try his right. Sid. 286.

It lies to compel a miniſterial act which concerns the public. 1. Wilſon, 283. 1. Bl. Rep. 640—although there be a more tedious remedy, Str. 1082. 4 Bur. 2188. 2 Bur. 1045; So if there be a legal right, and a remedy in equity, 3. Term Rep. 652. A mandamus lies to obtain admiſſion into a trading company. Rex v. Turkey Company, 2 Bur. 1000. Carthew 448. 5 Mod. 402; So it lies to put the corporate ſeal to an inſtrument. 4. Term. Rep. 699; to commiſſioners of the exciſe to grant a permit, 2 Term. Rep. 381; to admit to an office, 3 Term. Rep. 575; to deliver papers which concern the public, 2 Sid. 31. A mandamus will ſometimes lie in a

doubtful caſe, 1 Levinz 123, to be further conſidered on the return, 2 Levinz, 14. 1 Siderfin, 169.

It lies to be admitted a member of a church, 3. Bur. 1265, 1043.

The proceſs is as ancient as the time of Ed. 2d. 1 Levinz 23.

The firſt writ of mandamus is not peremptory, it only commands the officer to do the thing or ſhew cauſe why he ſhould not do it. If the cauſe returned be ſufficient, there is an end of the proceeding, if not, a peremptory mandamus is then awarded.

It is ſaid to be a writ of diſcretion. But the diſcretion of a court always means a ſound, legal diſcretion, not an arbitrary will. If the applicant makes out a proper caſe, the court are bound to grant it. They can refuſe juſtice to no man.

On a ſubſequent day, and before the court had given an opinion, Mr. Lee read the affidavit of Hazen Kimball, who had been a clerk in the office of the Secretary of State, and had been to a diſtant part of the United States, but whoſe return was not known to the applicant till after the argument of the caſe.

It ſtated that on the third of March, 1801, he was a clerk in the department of ſtate. That there were in the office, on that day, commiſſions made out and ſigned by the preſident, appointing William Marbury a juſtice of peace for the county of Waſhington; and Robert T. Hooe a juſtice of the peace for the county of Alexandria, in the diſtrict of Columbia.

Afterwards, on the 24th of February the following opinion of the court was delivered by the chief juſtice.

Opinion of the court.

At the laſt term on the affidavits then read and filed with the clerk, a rule was granted in this caſe, requiring the ſecretary of ſtate to ſhew cauſe why a mandamus

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ſhould not iſſue, directing him to deliver to William Marbury his commiſſion as a juſtice of the peace for the county of Waſhington, in the diſtrict of Columbia.

No cauſe has been ſhewn, and the preſent motion is for a mandamus. The peculiar delicacy of this caſe, the novelty of ſome of its circumſtances, and the real difficulty attending the points which occur in it, require a complete expoſition of the principles, on which the opinion to be given by the court, is founded.

Theſe principles have been, on the ſide of the applicant, very ably argued at the bar. In rendering the opinion of the court, there will be ſome departure in form, though not in ſubſtance, from the points ſtated in that argument.

In the order in which the court has viewed this ſubject, the following queſtions have beeen conſidered and decided.

1ſt Has the applicant a right to the commiſſion he demands?

2dly. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

3dly. If they do afford him a remedy, is it a *mandamus* iſſuing from this court?

The firſt object of enquiry is,

1ſt. Has the applicant a right to the commiſſion he demands?

His right originates in an act of congreſs paſſed in February 1801, concerning the diſtrict of Columbia.

After dividing the diſtrict into two counties, the 11th ſection of this law, enacts, "that there ſhall be appointed in and for each of the ſaid counties, ſuch number of diſcreet perſons to be juſtices of the peace as the preſident of the United States ſhall, from time to time, think expedient, to continue in office for five years.

It appears, from the affidavits, that in compliance with this law, a commiſſion for William Marbury as a juſtice of peace for the county of Waſhington, was ſigned by John Adams, then preſident of the United States; after which the ſeal of the United States was affixed to it; but the commiſſion has never reached the perſon for whom it was made out.

In order to determine whether he is entitled to this commiſſion, it becomes neceſſary to enquire whether he has been appointed to the office. For if he has been appointed, the law continues him in office for five years, and he is entitled to the poſſeſſion of thoſe evidences of office, which, being completed, became his property.

The 2d ſection of the 2d article of the conſtitution, declares, that, "the preſident ſhall nominate, and, by "and with the advice and conſent of the ſenate, ſhall "appoint ambaſſadors, other public miniſters and conſuls, "and all other officers of the United States, whoſe ap- "pointments are not otherwiſe provided for."

The third ſection declares, that "he ſhall commiſſion "all the officers of the United States."

An act of congreſs directs the ſecretary of ſtate to keep the ſeal of the United States, "to make out and record, and affix the ſaid ſeal to all civil commiſſions to officers of the United States, to be appointed by the Preſident, by and with the conſent of the ſenate, or by the Preſident alone; provided that the ſaid ſeal ſhall not be affixed to any commiſſion before the ſame ſhall have been ſigned by the Preſident of the United States."

Theſe are the clauſes of the conſtitution and laws of the United States, which affect this part of the caſe. They ſeem to contemplate three diſtinct operations:

1ſt, The nomination. This is the ſole act of the Preſident, and is completely voluntary.

2d. The appointment. This is alſo the act of the Preſident, and is alſo a voluntary act, though it can only be performed by and with the advice and conſent of the ſenate.

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3d. The commiſſion. To grant a commiſſion to a perſon appointed, might perhaps be deemed a duty enjoined by the conſtitution. "He ſhall," ſays that inſtrument, "commiſſion all the officers of the United States."

The acts of appointing to office, and commiſſioning the perſon appointed, can ſcarcely be conſidered as one and the ſame; ſince the power to perform them is given in two ſeparate and diſtinct ſections of the conſtitution. The diſtinction between the appointment and the commiſſion will be rendered more apparent, by adverting to that proviſion in the ſecond ſection of the ſecond article of the conſtitution, which authorizes congreſs "to veſt, by law, the appointment of ſuch inferior officers, as they think proper, in the Preſident alone, in the courts of law, or in the heads of departments;" thus contemplating caſes where the law may direct the Preſident to commiſſion an officer appointed by the courts, or by the heads of departments. In ſuch a caſe, to iſſue a commiſſion would be apparently a duty diſtinct from the appointment, the performance of which, perhaps, could not legally be refuſed.

Although that clauſe of the conſtitution which requires the Preſident to commiſſion all the officers of the United States, may never have been applied to officers appointed otherwiſe than by himſelf, yet it would be difficult to deny the legiſlative power to apply it to ſuch caſes. Of conſequence the conſtitutional diſtinction between the appointment to an office and the commiſſion of an officer, who has been appointed, remains the ſame as if in practice the Preſident had commiſſioned officers appointed by an authority other than his own.

It follows too, from the exiſtence of this diſtinction, that, if an appointment was to be evidenced by any public act, other than the commiſſion, the performance of ſuch public act would create the officer; and if he was not removeable at the will of the Preſident, would either give him a right to his commiſſion, or enable him to perform the duties without it.

Theſe obſervations are premiſed ſolely for the purpoſe of rendering more intelligible thoſe which apply more directly to the particular caſe under conſideration.

This is an appointment made by the Preſident, by and with the advice and conſent of the ſenate, and is evidenced by no act but the commiſſion itſelf. In ſuch a caſe therefore the commiſſion and the appointment ſeem inſeparable; it being almoſt impoſſible to ſhew an appointment otherwiſe than by proving the exiſtence of a commiſſion; ſtill the commiſſion is not neceſſarily the appointment; though concluſive evidence of it.

But at what ſtage does it amount to this concluſive evidence?

The anſwer to this queſtion ſeems an obvious one. The appointment being the ſole act of the Preſident, muſt be completely evidenced, when it is ſhewn that he has done every thing to be performed by him.

Should the commiſſion, inſtead of being evidence of an appointment, even be conſidered as conſtituting the appointment itſelf; ſtill it would be made when the laſt act to be done by the Preſident was performed, or, at furtheſt, when the commiſſion was complete.

The laſt act to be done by the Preſident, is the ſignature of the commiſſion. He has then acted on the advice and conſent of the ſenate to his own nomination. The time for deliberation has then paſſed. He has decided. His judgment, on the advice and conſent of the ſenate concurring with his nomination, has been made, and the officer is appointed. This appointment is evidenced by an open, unequivocal act; and being the laſt act required from the perſon making it, neceſſarily excludes the idea of its being, ſo far as reſpects the appointment, an inchoate and incomplete tranſaction.

Some point of time muſt be taken when the power of the executive over an officer, not removeable at his will, muſt ceaſe. That point of time muſt be when the conſtitutional power of appointment has been exerciſed. And this power has been exerciſed when the laſt act, required from the perſon poſſeſſing the power, has been performed. This laſt act is the ſignature of the commiſſion. This idea ſeems to have prevailed with the legiſlature, when the act paſſed, converting the department

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of foreign affairs into the department of ſtate. By that act it is enacted, that the ſecretary of ſtate ſhall keep the ſeal of the United States, "and ſhall make out and re-"cord, and ſhall affix the ſaid ſeal to all civil commiſſions "to officers of the United States, to be appointed by the "Preſident:" "Provided that the ſaid ſeal ſhall not be af-"fixed to any commiſſion, before the ſame ſhall have been "ſigned by the Preſident of the United States; nor to "any other inſtrument or act, without the ſpecial war-"rant of the Preſident therefor."

The ſignature is a warrant for affixing the great ſeal to the commiſſion; and the great ſeal is only to be affixed to an inſtrument which is complete. It atteſts, by an act ſuppoſed to be of public notoriety, the verity of the Preſidential ſignature.

It is never to be affixed till the commiſſion is ſigned, becauſe the ſignature, which gives force and effect to the commiſſion, is concluſive evidence that the appointment is made.

The commiſſion being ſigned, the ſubſequent duty of the ſecretary of ſtate is preſcribed by law, and not to be guided by the will of the Preſident. He is to affix the ſeal of the United States to the commiſſion, and is to record it.

This is not a proceeding which may be varied, if the judgment of the executive ſhall ſuggeſt one more eligible; but is a preciſe courſe accurately marked out by law, and is to be ſtrictly purſued. It is the duty of the ſecretary of ſtate to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts, in this reſpect, as has been very properly ſtated at the bar, under the authority of law, and not by the inſtructions of the Preſident. It is a miniſterial act which the law enjoins on a particular officer for a particular purpoſe.

If it ſhould be ſuppoſed, that the ſolemnity of affixing the ſeal, is neceſſary not only to the validity of the commiſſion, but even to the completion of an appointment, ſtill when the ſeal is affixed the appointment is made, and

the commiſſion is valid. No other ſolemnity is required by law; no other act is to be performed on the part of government. All that the executive can do to inveſt the perſon with his office, is done; and unleſs the appointment be then made, the executive cannot make one without the co-operation of others.

After ſearching anxiouſly for the principles on which a contrary opinion may be ſupported, none have been found which appear of ſufficient force to maintain the oppoſite doctrine.

Such as the imagination of the court could ſuggeſt, have been very deliberately examined, and after allowing them all the weight which it appears poſſible to give them, they do not ſhake the opinion which has been formed.

In conſidering this queſtion, it has been conjectured that the commiſſion may have been aſſimilated to a deed, to the validity of which, delivery is eſſential.

This idea is founded on the ſuppoſition that the commiſſion is not merely *evidence* of an appointment, but is itſelf the actual appointment; a ſuppoſition by no means unqueſtionable. But for the purpoſe of examining this objection fairly, let it be conceded, that the principle, claimed for its ſupport, is eſtabliſhed.

The appointment being, under the conſtitution, to be made by the Preſident *perſonally*, the delivery of the deed of appointment, if neceſſary to its completion, muſt be made by the Preſident alſo. It is not neceſſary that the livery ſhould be made perſonally to the grantee of the office: It never is ſo made. The law would ſeem to contemplate that it ſhould be made to the ſecretary of ſtate, ſince it directs the ſecretary to affix the ſeal to the commiſſion *after* it ſhall have been ſigned by the Preſident. If then the act of livery be neceſſary to give validity to the commiſſion, it has been delivered when executed and given to the ſecretary for the purpoſe of being ſealed, recorded, and tranſmitted to the party.

But in all caſes of letters patent, certain ſolemnities are required by law, which ſolemnities are the evidences

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of the validity of the inſtrument. A formal delivery to the perſon is not among them. In caſes of commiſſions, the ſign manual of the Preſident, and the ſeal of the United States, are thoſe ſolemnities. This objection therefore does not touch the caſe.

It has alſo occurred as poſſible, and barely poſſible, that the tranſmiſſion of the commiſſion, and the acceptance thereof, might be deemed neceſſary to complete the right of the plaintiff.

The tranſmiſſion of the commiſſion, is a practice directed by convenience, but not by law. It cannot therefore be neceſſary to conſtitute the appointment which muſt precede it, and which is the mere act of the Preſident. If the executive required that every perſon appointed to an office, ſhould himſelf take means to procure his commiſſion, the appointment would not be the leſs valid on that account. The appointment is the ſole act of the Preſident; the tranſmiſſion of the commiſſion is the ſole act of the officer to whom that duty is aſſigned, and may be accelerated or retarded by circumſtances which can have no influence on the appointment. A commiſſion is tranſmitted to a perſon already appointed; not to a perſon to be appointed or not, as the letter encloſing the commiſſion ſhould happen to get into the poſt-office and reach him in ſafety, or to miſcarry.

It may have ſome tendency to elucidate this point, to enquire, whether the poſſeſſion of the original commiſſion be indiſpenſably neceſſary to authorize a perſon, appointed to any office, to perform the duties of that office. If it was neceſſary, then a loſs of the commiſſion would loſe the office. Not only negligence, but accident or fraud, fire or theft, might deprive an individual of his office. In ſuch a caſe, I preſume it could not be doubted, but that a copy from the record of the office of the ſecretary of ſtate, would be, to every intent and purpoſe, equal to the original. The act of congreſs has expreſsly made it ſo. To give that copy validity, it would not be neceſſary to prove that the original had been tranſmitted and afterwards loſt. The copy would be complete evidence that the original had exiſted, and that the appointment had been made, but, not that the original had been tranſmitted. If indeed it ſhould appear that

the original had been miſlaid in the office of ſtate, that circumſtance would not affect the operation of the copy. When all the requiſites have been performed which authorize a recording officer to record any inſtrument whatever, and the order for that purpoſe has been given, the inſtrument is, in law, conſidered as recorded, although the manual labour of inſerting it in a book kept for that purpoſe may not have been performed.

In the caſe of commiſſions, the law orders the ſecretary of ſtate to record them. When therefore they are ſigned and ſealed, the order for their being recorded is given; and whether inſerted in the book or not, they are in law recorded.

A copy of this record is declared equal to the original, and the fees, to be paid by a perſon requiring a copy, are aſcertained by law. Can a keeper of a public record, eraſe therefrom a commiſſion which has been recorded? Or can he refuſe a copy thereof to a perſon demanding it on the terms preſcribed by law?

Such a copy would, equally with the original, authorize the juſtice of peace to proceed in the performance of his duty, becauſe it would, equally with the original, atteſt his appointment.

If the tranſmiſſion of a commiſſion be not conſidered as neceſſary to give validity to an appointment; ſtill leſs is its acceptance. The appointment is the ſole act of the Preſident; the acceptance is the ſole act of the officer, and is, in plain common ſenſe, poſterior to the appointment. As he may reſign, ſo may he refuſe to accept: but neither the one, nor the other, is capable of rendering the appointment a non-entity.

That this is the underſtanding of the government, is apparent from the whole tenor of its conduct.

A commiſſion bears date, and the ſalary of the officer commences from his appointment; not from the tranſmiſſion or acceptance of his commiſſion. When a perſon, appointed to any office, refuſes to accept that office, the ſucceſſor is nominated in the place of the perſon who

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has declined to accept, and not in the place of the perſon who had been previouſly in office, and had created the original vacancy.

It is therefore decidedly the opinion of the court, that when a commiſſion has been ſigned by the Preſident, the appointment is made; and that the commiſſion is complete, when the ſeal of the United States has been affixed to it by the ſecretary of ſtate.

Where an officer is removeable at the will of the executive, the circumſtance which completes his appointment is of no concern; becauſe the act is at any time revocable; and the commiſſion may be arreſted, if ſtill in the office. But when the officer is not removeable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be reſumed.

The diſcretion of the executive is to be exerciſed until the appointment has been made. But having once made the appointment, his power over the office is terminated in all caſes, where, by law, the officer is not removeable by him. The right to the office is *then* in the perſon appointed, and he has the abſolute, unconditional, power of accepting or rejecting it.

Mr. Marbury, then, ſince his commiſſion was ſigned by the Preſident, and ſealed by the ſecretary of ſtate, was appointed; and as the law creating the office, gave the officer a right to hold for five years, independent of the executive, the appointment was not revocable; but veſted in the officer legal rights, which are protected by the laws of his country.

To withhold his commiſſion, therefore, is an act deemed by the court not warranted by law, but violative of a veſted legal right.

This brings us to the ſecond enquiry; which is,

2dly. If he has a right, and that right has been violated, do the laws of his country afford him a remedy?

The very eſſence of civil liberty certainly conſiſts in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the firſt duties of government is to afford that protection. In Great Britain the king himſelf is ſued in the reſpectful form of a petition, and he never fails to comply with the judgment of his court.

In the 3d vol. of his commentaries, p. 23, Blackſtone ſtates two caſes in which a remedy is afforded by mere operation of law.

"In all other caſes," he ſays, "it is a general and indiſ-
"putable rule, that where there is a legal right, there is
"alſo a legal remedy by ſuit or action at law, whenever
"that right is invaded."

And afterwards, p. 109, of the ſame vol. he ſays, "I
"am next to conſider ſuch injuries as are cognizable by
"the courts of the common law. And herein I ſhall for
"the preſent only remark, that all poſſible injuries what-
"ſoever, that did not fall within the excluſive cognizance
"of either the eccleſiaſtical, military, or maritime tribu-
"nals, are for that very reaſon, within the cognizance
"of the common law courts of juſtice; for it is a ſettled
"and invariable principle in the laws of England, that
"every right, when withheld, muſt have a remedy, and
"every injury its proper redreſs."

The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly ceaſe to deſerve this high appellation, if the laws furniſh no remedy for the violation of a veſted legal right.

If this obloquy is to be caſt on the juriſprudence of our country, it muſt ariſe from the peculiar character of the caſe.

It behoves us then to enquire whether there be in its compoſition any ingredient which ſhall exempt it from legal inveſtigation, or exclude the injured party from legal redreſs. In purſuing this enquiry the firſt queſtion which preſents itſelf, is, whether this can be arranged

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with that claſs of caſes which come under the deſcription of *damnum abſque injuria*—a loſs without an injury.

This deſcription of caſes never has been conſidered, and it is believed never can be conſidered, as comprehending offices of truſt, of honor or of profit. The office of juſtice of peace in the diſtrict of Columbia is ſuch an office; it is therefore worthy of the attention and guardianſhip of the laws. It has received that attention and guardianſhip. It has been created by ſpecial act of congreſs, and has been ſecured, ſo far as the laws can give ſecurity to the perſon appointed to fill it, for five years. It is not then on account of the worthleſsneſs of the thing purſued, that the injured party can be alleged to be without remedy.

Is it in the nature of the tranſaction? Is the act of delivering or withholding a commiſſion to be conſidered as a mere political act, belonging to the executive department alone, for the performance of which, entire confidence is placed by our conſtitution in the ſupreme executive; and for any miſconduct reſpecting which, the injured individual has no remedy.

That there may be ſuch caſes is not to be queſtioned; but that every act of duty, to be performed in any of the great departments of government, conſtitutes ſuch a caſe, is not to be admitted.

By the act concerning invalids, paſſed in June, 1794, vol. 3. p. 112, the ſecretary at war is ordered to place on the penſion liſt, all perſons whoſe names are contained in a report previouſly made by him to congreſs. If he ſhould refuſe to do ſo, would the wounded veteran be without remedy? Is it to be contended that where the law in preciſe terms, directs the performance of an act, in which an individual is intereſted, the law is incapable of ſecuring obedience to its mandate? Is it on account of the character of the perſon againſt whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country?

Whatever the practice on particular occaſions may be, the theory of this principle will certainly never be main-

tained. No act of the legiſlature confers ſo extraordinary a privilege, nor can it derive countenance from the doctrines of the common law. After ſtating that perſonal injury from the king to a ſubject is preſumed to be impoſſible, Blackſtone, vol. 3. p. 255, ſays, "but injuries "to the rights of property can ſcarcely be committed by "the crown without the intervention of its officers; for "whom, the law, in matters of right, entertains no re- "ſpect or delicacy; but furniſhes various methods of de- "tecting the errors and miſconduct of thoſe agents, by "whom the king has been deceived and induced to do a "temporary injuſtice."

By the act paſſed in 1796, authoriſing the ſale of the lands above the mouth of Kentucky river (vol. 3d. p. 299) the purchaſer, on paying his purchaſe money, becomes completely entitled to the property purchaſed; and on producing to the ſecretary of ſtate, the receipt of the treaſurer upon a certificate required by the law, the preſident of the United States is authoriſed to grant him a patent. It is further enacted that all patents ſhall be countерſigned by the ſecretary of ſtate, and recorded in his office. If the ſecretary of ſtate ſhould chooſe to withhold this patent; or the patent being loſt, ſhould refuſe a copy of it; can it be imagined that the law furniſhes to the injured perſon no remedy?

It is not believed that any perſon whatever would attempt to maintain ſuch a propoſition.

It follows then that the queſtion, whether the legality of an act of the head of a department be examinable in a court of juſtice or not, muſt always depend on the nature of that act.

If ſome acts be examinable, and others not, there muſt be ſome rule of law to guide the court in the exerciſe of its juriſdiction.

In ſome inſtances there may be difficulty in applying the rule to particular caſes; but there cannot, it is believed, be much difficulty in laying down the rule.

By the conſtitution of the United States, the Preſident is inveſted with certain important political powers, in the

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exerciſe of which he is to uſe his own diſcretion, and is accountable only to his country in his political character, and to his own conſcience. To aid him in the performance of theſe duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

In ſuch caſes, their acts are his acts; and whatever opinion may be entertained of the manner in which executive diſcretion may be uſed, ſtill there exiſts, and can exiſt, no power to control that diſcretion. The ſubjects are political. They reſpect the nation, not individual rights, and being entruſted to the executive, the deciſion of the executive is concluſive. The application of this remark will be perceived by adverting to the act of congreſs for eſtabliſhing the department of foreign affairs. This officer, as his duties were preſcribed by that act, is to conform preciſely to the will of the Preſident. He is the mere organ by whom that will is communicated. The acts of ſuch an officer, as an officer, can never be examinable by the courts.

But when the legiſlature proceeds to impoſe on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of thoſe acts; he is ſo far the officer of the law; is amenable to the laws for his conduct; and cannot at his diſcretion ſport away the veſted rights of others.

The concluſion from this reaſoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the Preſident, or rather to act in caſes in which the executive poſſeſſes a conſtitutional or legal diſcretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a ſpecific duty is aſſigned by law, and individual rights depend upon the performance of that duty, it ſeems equally clear that the individual who conſiders himſelf injured, has a right to reſort to the laws of his country for a remedy.

If this be the rule, let us enquire how it applies to the caſe under the conſideration of the court.

The power of nominating to the ſenate, and the power of appointing the perſon nominated, are political powers, to be exerciſed by the Preſident according to his own diſcretion. When he has made an appointment, he has exerciſed his whole power, and his diſcretion has been completely applied to the caſe. If, by law, the officer be removable at the will of the Preſident, then a new appointment may be immediately made, and the rights of the officer are terminated. But as a fact which has exiſted cannot be made never to have exiſted, the appointment cannot be annihilated; and conſequently if the officer is by law not removable at the will of the Preſident; the rights he has acquired are protected by the law, and are not reſumable by the Preſident. They cannot be extinguiſhed by executive authority, and he has the privilege of aſſerting them in like manner as if they had been derived from any other ſource.

The queſtion whether a right has veſted or not, is, in its nature, judicial, and muſt be tried by the judicial authority. If, for example, Mr. Marbury had taken the oaths of a magiſtrate, and proceeded to act as one; in conſequence of which a ſuit had been inſtituted againſt him, in which his defence had depended on his being a magiſtrate; the validity of his appointment muſt have been determined by judicial authority.

So, if he conceives that, by virtue of his appointment, he has a legal right, either to the commiſſion which has been made out for him, or to a copy of that commiſſion, it is equally a queſtion examinable in a court, and the deciſion of the court upon it muſt depend on the opinion entertained of his appointment.

That queſtion has been diſcuſſed, and the opinion is, that the lateſt point of time which can be taken as that at which the appointment was complete, and evidenced, was when, after the ſignature of the preſident, the ſeal of the United States was affixed to the commiſſion

It is then the opinion of the court,

1ſt. That by ſigning the commiſſion of Mr. Marbury, the preſident of the United States appointed him a juſtice

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of peace, for the county of Washington in the district of Columbia; and that the seal of the United States, affixed thereto by the secretary of state, is conclusive testimony of the verity of the signature, and of the completion of the appointment; and that the appointment conferred on him a legal right to the office for the space of five years.

2dly. That, having this legal title to the office, he has a consequent right to the commission; a refusal to deliver which, is a plain violation of that right, for which the laws of his country afford him a remedy.

It remains to be enquired whether,

3dly. He is entitled to the remedy for which he applies. This depends on,

1st. The nature of the writ applied for, and,

2dly. The power of this court.

1st. The nature of the writ.

Blackstone, in the 3d volume of his commentaries, page 110, defines a mandamus to be, "a command issuing in the king's name from the court of king's bench, "and directed to any person, corporation, or inferior "court of judicature within the king's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and "which the court of king's bench has previously determined, or at least supposes, to be consonant to right "and justice."

Lord Mansfield, in 3d Burrows 1266, in the case of the *King v. Baker, et al.* states with much precision and explicitness the cases in which this writ may be used.

"Whenever," says that very able judge, "there is a "right to execute an office, perform a service, or exercise "a franchise (more especially if it be in a matter of public concern, or attended with profit) and a person is "kept out of possession, or dispossessed of such right, and

"has no other ſpecific legal remedy, this court ought "to aſſiſt by mandamus, upon reaſons of juſtice, as the "writ expreſſes, and upon reaſons of public policy, to "preſerve peace, order and good government." In the ſame caſe he ſays, "this writ ought to be uſed upon all "occaſions where the law has eſtabliſhed no ſpecific "remedy, and where in juſtice and good government "there ought to be one."

In addition to the authorities now particularly cited, many others were relied on at the bar, which ſhow how far the practice has conformed to the general doctrines that have been juſt quoted.

This writ, if awarded, would be directed to an officer of government, and its mandate to him would be, to uſe the words of Blackſtone, "to do a particular thing "therein ſpecified, which appertains to his office and "duty and which the court has previouſly determined, "or at leaſt ſuppoſes, to be conſonant to right and juſ- "tice." Or, in the words of Lord Mansfield, the applicant, in this caſe, has a right to execute an office of public concern, and is kept out of poſſeſſion of that right.

Theſe circumſtances certainly concur in this caſe.

Still, to render the mandamus a proper remedy, the officer to whom it is to be directed, muſt be one to whom, on legal principles, ſuch writ may be directed; and the perſon applying for it muſt be without any other ſpecific and legal remedy.

1ſt. With reſpect to the officer to whom it would be directed. The intimate political relation, ſubſiſting between the preſident of the United States and the heads of departments, neceſſarily renders any legal inveſtigation of the acts of one of thoſe high officers peculiarly irkſome, as well as delicate; and excites ſome heſitation with reſpect to the propriety of entering into ſuch inveſtigation. Impreſſions are often received without much reflection or examination, and it is not wonderful that in ſuch a caſe as this, the aſſertion, by an individual, of his legal claims in a court of juſtice; to which claims it is the duty of that court to attend; ſhould at firſt view be conſidered

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by ſome, as an attempt to intrude into the cabinet, and to intermeddle with the prerogatives of the executive.

It is ſcarcely neceſſary for the court to diſclaim all pretenſions to ſuch a juriſdiction. An extravagance, ſo abſurd and exceſſive, could not have been entertained for a moment. The province of the court is, ſolely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a diſcretion. Queſtions, in their nature political, or which are, by the conſtitution and laws, ſubmitted to the executive, can never be made in this court.

But, if this be not ſuch a queſtion; if ſo far from being an intruſion into the ſecrets of the cabinet, it reſpects a paper, which, according to law, is upon record, and to a copy of which the law gives a right, on the payment of ten cents; if it be no intermeddling with a ſubject, over which the executive can be conſidered as having exerciſed any control; what is there in the exalted ſtation of the officer, which ſhall bar a citizen from aſſerting, in a court of juſtice, his legal rights, or ſhall forbid a court to liſten to the claim; or to iſſue a mandamus, directing the performance of a duty, not depending on executive diſcretion, but on particular acts of congreſs and the general principles of law?

If one of the heads of departments commits any illegal act, under color of his office, by which an individual ſuſtains an injury, it cannot be pretended that his office alone exempts him from being ſued in the ordinary mode of proceeding, and being compelled to obey the judgment of the law. How then can his office exempt him from this particular mode of deciding on the legality of his conduct, if the caſe be ſuch a caſe as would, were any other individual the party complained of, authorize the proceſs?

It is not by the office of the perſon to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of iſſuing a mandamus, is to be determined. Where the head of a department acts in a caſe, in which executive diſcretion is to be exerciſed; in which he is the mere organ of executive will; it is

again repeated, that any application to a court to control, in any reſpect, his conduct, would be rejected without heſitation.

But where he is directed by law to do a certain act affecting the abſolute rights of individuals, in the performance of which he is not placed under the particular direction of the Preſident, and the performance of which, the Preſident cannot lawfully forbid, and therefore is never preſumed to have forbidden; as for example, to record a commiſſion, or a patent for land, which has received all the legal ſolemnities; or to give a copy of ſuch record; in ſuch caſes, it is not perceived on what ground the courts of the country are further excuſed from the duty of giving judgment, that right be done to an injured individual, than if the ſame ſervices were to be performed by a perſon not the head of a department.

This opinion ſeems not now, for the firſt time, to be taken up in this country.

It muſt be well recollected that in 1792, an act paſſed, directing the ſecretary at war to place on the penſion liſt ſuch diſabled officers and ſoldiers as ſhould be reported to him, by the circuit courts, which act, ſo far as the duty was impoſed on the courts, was deemed unconſtitutional; but ſome of the judges, thinking that the law might be executed by them in the character of commiſſioners, proceeded to act and to report in that character.

This law being deemed unconſtitutional at the circuits, was repealed, and a different ſyſtem was eſtabliſhed; but the queſtion whether thoſe perſons, who had been reported by the judges, as commiſſioners, were entitled, in conſequence of that report, to be placed on the penſion liſt, was a legal queſtion, properly determinable in the courts, although the act of placing ſuch perſons on the liſt was to be performed by the head of a department.

That this queſtion might be properly ſettled, congreſs paſſed an act in February, 1793, making it the duty of the ſecretary of war, in conjunction with the attorney general, to take ſuch meaſures, as might be neceſſary to obtain an adjudication of the ſupreme court of the United

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States on the validity of any ſuch rights, claimed under the act aforeſaid.

After the paſſage of this act, a mandamus was moved for, to be directed to the ſecretary at war, commanding him to place on the penſion liſt, a perſon ſtating himſelf to be on the report of the judges.

There is, therefore, much reaſon to believe, that this mode of trying the legal right of the complainant, was deemed by the head of a department, and by the higheſt law officer of the United States, the moſt proper which could be ſelected for the purpoſe.

When the ſubject was brought before the court the deciſion was, not that a mandamus would not lie to the head of a department, directing him to perform an act, enjoined by law, in the performance of which an individual had a veſted intereſt; but that a mandamus ought not to iſſue in that caſe—the deciſion neceſſarily to be made if the report of the commiſſioners did not confer on the applicant a legal right.

The judgment in that caſe, is underſtood to have decided the merits of all claims of that deſcription; and the perſons on the report of the commiſſioners found it neceſſary to purſue the mode preſcribed by the law ſubſequent to that which had been deemed unconſtitutional, in order to place themſelves on the penſion liſt.

The doctrine, therefore, now advanced, is by no means a novel one.

It is true that the mandamus, now moved for, is not for the performance of an act expreſsly enjoined by ſtatute.

It is to deliver a commiſſion; on which ſubject the acts of Congreſs are ſilent. This difference is not conſidered as affecting the caſe. It has already been ſtated that the applicant has, to that commiſſion, a veſted legal right, of which the executive cannot deprive him. He has been appointed to an office, from which he is not removable at the will of the executive; and being ſo

appointed, he has a right to the commiſſion which the ſecretary has received from the preſident for his uſe. The act of congreſs does not indeed order the ſecretary of ſtate to ſend it to him, but it is placed in his hands for the perſon entitled to it; and cannot be more lawfully withheld by him, than by any other perſon.

It was at firſt doubted whether the action of *detinue* was not a ſpecific legal remedy for the commiſſion which has been withheld from Mr. Marbury; in which caſe a mandamus would be improper. But this doubt has yielded to the conſideration that the judgment in *detinue* is for the thing itſelf, *or* its value. The value of a public office not to be ſold, is incapable of being aſcertained; and the applicant has a right to the office itſelf, or to nothing. He will obtain the office by obtaining the commiſſion, or a copy of it from the record.

This, then, is a plain caſe for a mandamus, either to deliver the commiſſion, or a copy of it from the record; and it only remains to be enquired,

Whether it can iſſue from this court.

The act to eſtabliſh the judicial courts of the United States authorizes the ſupreme court "to iſſue writs of "mandamus, in caſes warranted by the principles and "uſages of law, to any courts appointed, or perſons holding office, under the authority of the United States."

The ſecretary of ſtate, being a perſon holding an office under the authority of the United States, is preciſely within the letter of the deſcription; and if this court is not authorized to iſſue a writ of mandamus to ſuch an officer, it muſt be becauſe the law is unconſtitutional, and therefore abſolutely incapable of conferring the authority, and aſſigning the duties which its words purport to confer and aſſign.

The conſtitution veſts the whole judicial power of the United States in one ſupreme court, and ſuch inferior courts as congreſs ſhall, from time to time, ordain and eſtabliſh. This power is expreſsly extended to all caſes ariſing under the laws of the United States; and conſequently, in ſome form, may be exerciſed over the preſent

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case; because the right claimed is given by a law of the United States.

In the distribution of this power it is declared that "the "supreme court shall have original jurisdiction in all "cases affecting ambassadors, other public ministers and "consuls, and those in which a state shall be a party. "In all other cases, the supreme court shall have appellate "jurisdiction."

It has been insisted, at the bar, that as the original grant of jurisdiction, to the supreme and inferior courts, is general, and the clause, assigning original jurisdiction to the supreme court, contains no negative or restrictive words; the power remains to the legislature, to assign original jurisdiction to that court in other cases than those specified in the article which has been recited; provided those cases belong to the judicial power of the United States.

If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunals in which it should be vested. The subsequent part of the section is mere surplusage, is entirely without meaning, if such is to be the construction. If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original; and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance.

Affirmative words are often, in their operation, negative of other objects than those affirmed; and in this case, a negative or exclusive sense must be given to them or they have no operation at all.

It cannot be presumed that any clause in the constitution is intended to be without effect; and therefore such a construction is inadmissible, unless the words require it.

If the ſolicitude of the convention, reſpecting our peace with foreign powers, induced a proviſion that the ſupreme court ſhould take original juriſdiction in caſes which might be ſuppoſed to affect them; yet the clauſe would have proceeded no further than to provide for ſuch caſes, if no further reſtriction on the powers of congreſs had been intended. That they ſhould have appellate juriſdiction in all other caſes, with ſuch exceptions as congreſs might make, is no reſtriction; unleſs the words be deemed excluſive of original juriſdiction.

When an inſtrument organizing fundamentally a judicial ſyſtem, divides it into one ſupreme, and ſo many inferior courts as the legiſlature may ordain and eſtabliſh; then enumerates its powers, and proceeds ſo far to diſtribute them, as to define the juriſdiction of the ſupreme court by declaring the caſes in which it ſhall take original juriſdiction, and that in others it ſhall take appellate juriſdiction; the plain import of the words ſeems to be, that in one claſs of caſes its juriſdiction is original, and not appellate; in the other it is appellate, and not original. If any other conſtruction would render the clauſe inoperative, that is an additional reaſon for rejecting ſuch other conſtruction, and for adhering to their obvious meaning.

To enable this court then to iſſue a mandamus, it muſt be ſhewn to be an exerciſe of appellate juriſdiction, or to be neceſſary to enable them to exerciſe appellate juriſdiction.

It has been ſtated at the bar that the appellate juriſdiction may be exerciſed in a variety of forms, and that if it be the will of the legiſlature that a mandamus ſhould be uſed for that purpoſe, that will muſt be obeyed. This is true, yet the juriſdiction muſt be appellate, not original.

It is the eſſential criterion of appellate juriſdiction, that it reviſes and corrects the proceedings in a cauſe already inſtituted, and does not create that cauſe. Although, therefore, a mandamus may be directed to courts, yet to iſſue ſuch a writ to an officer for the delivery of a paper, is in effect the ſame as to ſuſtain an original action for that paper, and therefore ſeems not to belong to

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appellate, but to original juriſdiction. Neither is it neceſſary in ſuch a caſe as this, to enable the court to exerciſe its appellate juriſdiction.

The authority, therefore, given to the ſupreme court, by the act eſtabliſhing the judicial courts of the United States, to iſſue writs of mandamus to public officers, appears not to be warranted by the conſtitution; and it becomes neceſſary to enquire whether a juriſdiction, ſo conferred, can be exerciſed.

The queſtion, whether an act, repugnant to the conſtitution, can become the law of the land, is a queſtion deeply intereſting to the United States; but, happily, not of an intricacy proportioned to its intereſt. It ſeems only neceſſary to recogniſe certain principles, ſuppoſed to have been long and well eſtabliſhed, to decide it.

That the people have an original right to eſtabliſh, for their future government, ſuch principles as, in their opinion, ſhall moſt conduce to their own happineſs, is the baſis, on which the whole American fabric has been erected. The exerciſe of this original right is a very great exertion; nor can it, nor ought it to be frequently repeated. The principles, therefore, ſo eſtabliſhed, are deemed fundamental. And as the authority, from which they proceed, is ſupreme, and can ſeldom act, they are deſigned to be permanent.

This original and ſupreme will organizes the government, and aſſigns, to different departments, their reſpective powers. It may either ſtop here; or eſtabliſh certain limits not to be tranſcended by thoſe departments.

The government of the United States is of the latter deſcription. The powers of the legiſlature are defined, and limited; and that thoſe limits may not be miſtaken, or forgotten, the conſtitution is written. To what purpoſe are powers limited, and to what purpoſe is that limitation committed to writing, if theſe limits may, at any time, be paſſed by thoſe intended to be reſtrained? The diſtinction, between a government with limited and unlimited powers, is aboliſhed, if thoſe limits do not confine the perſons on whom they are impoſed, and if acts pro-

hibited and acts allowed, are of equal obligation. It is a propoſition too plain to be conteſted, that the conſtitution controls any legiſlative act repugnant to it; or, that the legiſlature may alter the conſtitution by an ordinary act.

Between theſe alternatives there is no middle ground. The conſtitution is either a ſuperior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legiſlative acts, and like other acts, is alterable when the legiſlature ſhall pleaſe to alter it.

If the former part of the alternative be true, then a legiſlative act contrary to the conſtitution is not law: if the latter part be true, then written conſtitutions are abſurd attempts, on the part of the people, to limit a power, in its own nature illimitable.

Certainly all thoſe who have framed written conſtitutions contemplate them as forming the fundamental and paramount law of the nation, and conſequently the theory of every ſuch government muſt be, that an act of the legiſlature, repugnant to the conſtitution, is void.

This theory is eſſentially attached to a written conſtitution, and is conſequently to be conſidered, by this court, as one of the fundamental principles of our ſociety. It is not therefore to be loſt ſight of in the further conſideration of this ſubject.

If an act of the legiſlature, repugnant to the conſtitution, is void, does it, notwithſtanding its invalidity, bind the courts, and oblige them to give it effect? Or, in other words, though it be not law, does it conſtitute a rule as operative as if it was a law? This would be to overthrow in fact what was eſtabliſhed in theory; and would ſeem, at firſt view, an abſurdity too groſs to be inſiſted on. It ſhall, however, receive a more attentive conſideration.

It is emphatically the province and duty of the judicial department to ſay what the law is. Thoſe who apply the rule to particular caſes, muſt of neceſſity expound and interpret that rule. If two laws conflict with each other, the courts muſt decide on the operation of each.

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So if a law be in oppoſition to the conſtitution; if both the law and the conſtitution apply to a particular caſe, ſo that the court muſt either decide that caſe conformably to the law, diſregarding the conſtitution; or conformably to the conſtitution, diſregarding the law; the court muſt determine which of theſe conflicting rules governs the caſe. This is of the very eſſence of judicial duty.

If then the courts are to regard the conſtitution; and the conſtitution is ſuperior to any ordinary act of the legiſlature; the conſtitution, and not ſuch ordinary act, muſt govern the caſe to which they both apply.

Thoſe then who controvert the principle that the conſtitution is to be conſidered, in court, as a paramount law, are reduced to the neceſſity of maintaining that courts muſt cloſe their eyes on the conſtitution, and ſee only the law.

This doctrine would ſubvert the very foundation of all written conſtitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void; is yet, in practice, completely obligatory. It would declare, that if the legiſlature ſhall do what is expreſsly forbiden, ſuch act, notwithſtanding the expreſs prohibition, is in reality effectual. It would be giving to the legiſlature a practical and real omnipotence, with the ſame breath which profeſſes to reſtrict their powers within narrow limits. It is preſcribing limits, and declaring that thoſe limits may be paſſed at pleaſure.

That it thus reduces to nothing what we have deemed the greateſt improvement on political inſtitutions—a written conſtitution—would of itſelf be ſufficient, in America, where written conſtitutions have been viewed with ſo much reverence, for rejecting the conſtruction. But the peculiar expreſſions of the conſtitution of the United States furniſh additional arguments in favour of its rejection.

The judicial power of the United States is extended to all caſes ariſing under the conſtitution.

Could it be the intention of thoſe who gave this power, to ſay that, in uſing it, the conſtitution ſhould not be looked into? That a caſe ariſing under the conſtitution ſhould be decided without examining the inſtrument under which it ariſes?

This is too extravagant to be maintained.

In ſome caſes then, the conſtitution muſt be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the conſtitution which ſerve to illuſtrate this ſubject.

It is declared that "no tax or duty ſhall be laid on arti-"cles exported from any ſtate." Suppoſe a duty on the export of cotton, of tobacco, or of flour; and a ſuit inſtituted to recover it. Ought judgment to be rendered in ſuch a caſe? ought the judges to cloſe their eyes on the conſtitution, and only ſee the law.

The conſtitution declares that "no bill of attainder or "*ex poſt facto* law ſhall be paſſed."

If, however, ſuch a bill ſhould be paſſed and a perſon ſhould be proſecuted under it; muſt the court condemn to death thoſe victims whom the conſtitution endeavours to preſerve?

"No perſon," ſays the conſtitution, "ſhall be convicted "of treaſon unleſs on the teſtimony of two witneſſes to "the ſame overt act, or on confeſſion in open court."

Here the language of the conſtitution is addreſſed eſpecially to the courts. It preſcribes, directly for them, a rule of evidence not to be departed from. If the legiſlature ſhould change that rule, and declare *one* witneſs, or a confeſſion *out* of court, ſufficient for conviction, muſt the conſtitutional principle yield to the legiſlative act?

From theſe, and many other ſelections which might be made, it is apparent, that the framers of the conſti-

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tution contemplated that inſtrument, as a rule for the government of *courts*, as well as of the legiſlature.

Why otherwiſe does it direct the judges to take an oath to ſupport it? This oath certainly applies, in an eſpecial manner, to their conduct in their official character. How immoral to impoſe it on them, if they were to be uſed as the inſtruments, and the knowing inſtruments, for violating what they ſwear to ſupport!

The oath of office, too, impoſed by the legiſlature, is completely demonſtrative of the legiſlative opinion on this ſubject. It is in theſe words, "I do ſolemnly "ſwear that I will adminiſter juſtice without reſpect "to perſons, and do equal right to the poor and to the "rich; and that I will faithfully and impartially diſcharge "all the duties incumbent on me as accord-"ing to the beſt of my abilities and underſtanding, agree-"ably to *the conſtitution*, and laws of the United States."

Why does a judge ſwear to diſcharge his duties agreably to the conſtitution of the United States, if that conſtitution forms no rule for his government? if it is cloſed upon him, and cannot be inſpected by him?

If ſuch be the real ſtate of things, this is worſe than ſolemn mockery. To preſcribe, or to take this oath, becomes equally a crime.

It is alſo not entirely unworthy of obſervation, that in declaring what ſhall be the *ſupreme* law of the land, the *conſtitution* itſelf is firſt mentioned; and not the laws of the United States generally, but thoſe only which ſhall be made in *purſuance* of the conſtitution, have that rank.

Thus, the particular phraſeology of the conſtitution of the United States confirms and ſtrengthens the principle, ſuppoſed to be eſſential to all written conſtitutions, that a law repugnant to the conſtitution is void; and that *courts*, as well as other departments, are bound by that inſtrument.

The rule muſt be diſcharged.